

STATE OF MICHIGAN
COURT OF APPEALS

In re M. H. JACKSON, Minor.

UNPUBLISHED
December 17, 2020

No. 352922
Isabella Circuit Court
Family Division
LC No. 17-000020-NA

Before: CAVANAGH, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order terminating his parental rights to the minor child, MJ, under MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (g) (failure to provide proper care and custody).¹ We affirm.

I. BACKGROUND

In January 2017, MJ was removed from her mother’s care because she was born drug-exposed. Respondent was not her legal father at the time she was born. Although respondent received the results of his DNA test in September 2017, which established that he was MJ’s biological father, he did not sign an affidavit of parentage until August 2018. Adjudication occurred in September 2018, and the Department of Health and Human Services (DHHS) filed a petition requesting the termination of respondent’s parental rights in November 2019.

Respondent was incarcerated during the majority of the case. At the beginning of July 2018, prior to adjudication, respondent sent a letter to the trial court stating that he was MJ’s father and “wanted to be involved.” There was a brief period of time in August 2018 when respondent was not in jail, before he went to jail again on August 14, 2018. Respondent was not able to participate in services because he had not been sentenced. After respondent was sentenced for retail fraud at the beginning of January 2019, he was transferred to the reception center in Jackson, and was not allowed to participate in services. Respondent went to prison at some point before

¹ During the proceedings, the trial court also terminated MJ’s mother’s parental rights. She is not a party to this appeal.

April 23, 2019. According to the trial court, respondent was eligible for parole in June or July 2019. Respondent testified that he was denied parole because he was a “menace to society.” The trial court stated that was likely not how the Parole Board “characterized it,” noting that this was not respondent’s “first prison commitment.”

The doctor who completed respondent’s psychological evaluation recommended that respondent participate in multiple services. Respondent was unable to participate in the majority of these services while he was in prison because he was either ineligible or was on the waitlist, or because the prison did not offer the service. However, respondent participated in other classes or programs that addressed many of the recommendations in the psychological evaluation. The trial court terminated respondent’s parental rights on February 10, 2020. This appeal followed.

II. STATUTORY GROUNDS

Respondent argues that the trial court erred by finding that there was clear and convincing evidence to terminate his parental rights. We disagree.

“This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination.” *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *In re Schadler*, 315 Mich App 406, 408; 890 NW2d 676 (2016) (quotation marks and citation omitted).

MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a respondent’s parental rights if “182 or more days have elapsed since the issuance of an initial dispositional order” and “[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.”

In this case, the initial disposition order was entered on October 4, 2018, and respondent’s parental rights were terminated on February 4, 2020. Therefore, more than 182 days had elapsed since the initial disposition order was entered. *Id.* The primary condition leading to adjudication was respondent’s admission that he was unable to provide proper care and custody of MJ because he was incarcerated. Respondent did not attempt to provide proper care and custody of MJ while he was incarcerated, which was for a majority of MJ’s life. The trial court concluded that there was no reasonable likelihood that the conditions that led to adjudication would be rectified within a reasonable time considering MJ’s age because MJ was almost three years old, it was unclear when respondent was going to be released on parole, and respondent would have to complete the recommendations provided in his psychological evaluation before MJ could be returned to his care. Although “[t]he mere present inability to personally care for one’s children as a result of incarceration does not constitute grounds for termination,” *In re Mason*, 486 Mich 142, 160; 782 NW2d 747 (2010), incarceration was not the sole reason for termination in this case. Respondent had a lengthy criminal history, and respondent testified that he had been addicted to alcohol for 14 years. Therefore, it is likely that a significant period would pass before respondent could display sufficient progress for reunification with MJ after he was released on parole. MJ cannot wait indefinitely for respondent to be released from prison and to address his criminality and substance abuse issues in the hopes that he might be successful. See *In re Dahms*, 187 Mich App 644, 647; 468 NW2d 315 (1991) (stating that under MCL 712A.19b(3)(c)(i), “the Legislature did not intend

that children be left indefinitely in foster care, but rather that parental rights be terminated if the conditions leading to the proceedings could not be rectified within a reasonable time”). Accordingly, the trial court did not err by terminating respondent’s parental rights under MCL 712A.19b(3)(c)(i). Because only one statutory ground is required to terminate a respondent’s parental rights, we need not address the additional statutory grounds on which the trial court terminated his parental rights. See *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro